

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Natural Resources, Division of Natural Areas & Preserves

Regulation/Package Title: Package DNAP 2015 NC CSI (161661) and
DNAP 2015 Endangered Species NC CSI (161665)

Rule Number(s): 1501:17-5-06, 1501:18-1-01, 1501:18-2-01, 1501:18-2-04, 1501:18-2-05

Date: 2/2/18

Rule Type:

☐ New

☒ 5-Year Review

☐ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

- Rule 1501:17-5-06 prohibits commercial activities on nature preserves without prior written permission from the chief of the division.
- Rule 1501:18-1-01 sets forth definitions for OAC 1501:18-1-01 through 1501:18-2-05.

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- Rule 1501:18-2-01 prohibits taking or possessing any threatened or endangered plant for commercial purposes.
- Rule 1501:18-2-04 requires any person in possession of a plant listed as endangered or threatened to provide proof that the plants were legally obtained.
- Rule 1501:18-2-05 describes legal and appropriate possession of threatened or endangered plants by commercial operations licensed under ORC Chapter 927.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 1518.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No to both questions.

If yes, please briefly explain the source and substance of the federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Regulation is necessary to protect rare plants from exploitation and possible eventual extirpation.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

We measure it by monitoring populations and reviewing native plant nursery inventories.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders were contacted by email sent on Friday, November 17, 2017; including the following members of The Ohio Native Plant Growers:

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- Keystone Flora Native Plant Nursery, Inc.
- Natives in Harmony, Inc.
- Naturally Native, Inc.
- Ohio Prairie Nursery, Inc.
- Riverside Native Trees, LLC.
- Scioto Gardens
- The Common Milkweed, Inc.

These rules were developed in the 1970s and have not been revised since their inception. The rare plant list is revised every biennial and there is a meeting for public comment on the proposed changes to the list.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

We received three responses; one said the organization had no comments, two requested clarification but did not provide input or request revisions.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The status of rare plants is based on vetted data from reliable sources stored in the Ohio Natural Heritage Database administered by the Ohio Department of Natural Resources.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Permits can be acquired from the Division for the collecting and handling of state listed plants. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

N/A

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

We have reviewed all state and federal regulations to confirm no duplication.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

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These rules have been in effect for decades so there will be no implementation concerns. Additionally, we try to inform interested parties the rules regulating state listed plants by public conferences, website, and stakeholder meetings.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

These rules can impact the nursery industry, specifically native plant nurseries, by restricting the collection of wild native plants. The native plant market is a very small market with only a handful of growers. ODNR stays connected with all known native plant growers that may have an interest in growing state listed plants.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There can be a fine for illegally collecting and handling of state listed plant material from the wild in Ohio.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The native plant market is a very small market with only a handful of growers.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Regulation is necessary to protect rare plants from exploitation and possible eventual extirpation. Permits can be acquired from the Division for the collecting and handling of state listed plants from the wild. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Permits can be acquired from the Division for the collecting and handling of state listed plants. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

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17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

N/A

18. What resources are available to assist small businesses with compliance of the regulation?

The ODNR website has information on the rare plants program, compliance guidelines, and lists contact information for dedicated staff around the state who can provide regional assistance to businesses.